

AN ACT

RELATING TO MOTOR VEHICLES; CLARIFYING RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS; CHANGING PROVISIONS APPLYING TO COMMERCIAL DRIVER'S LICENSES; COMPLYING WITH FEDERAL LAW REGARDING RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS AND PROHIBITED BLOOD OR BREATH ALCOHOL CONCENTRATIONS FOR COMMERCIAL DRIVERS; REVISING FEES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE MOTOR VEHICLE CODE; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-5-52 NMSA 1978 (being Laws 1989, Chapter 14, Section 1, as amended) is amended to read:

"66-5-52. SHORT TITLE.--Sections 66-5-52 through 66-5-72 NMSA 1978 may be cited as the "New Mexico Commercial Driver's License Act"."

Section 2. Section 66-5-54 NMSA 1978 (being Laws 1989, Chapter 14, Section 3, as amended) is amended to read:

"66-5-54. DEFINITIONS.--As used in the New Mexico Commercial Driver's License Act:

A. "commerce" means:

(1) trade, traffic or transportation within the jurisdiction of the United States between a place in New Mexico and a place outside of New Mexico, including a place outside of the United States; and

(2) trade, traffic or transportation in the United States that

affects any trade, traffic or transportation described in Paragraph (1) of this subsection;

B. "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(1) has a gross combination weight rating of more than twenty-six thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;

(2) has a gross vehicle weight rating of more than twenty-six thousand pounds;

(3) is designed to transport sixteen or more passengers, including the driver; or

(4) is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placarded under applicable law;

C. "employee" means an operator of a commercial motor vehicle, including full-time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers; and independent owner-operator contractors, while in the course of operating a commercial motor vehicle, who is either directly employed by or under lease to an employer;

D. "employer" means a person, including the United States, a state and a political subdivision of a state or their agencies or instrumentalities, who owns or leases a commercial motor vehicle or assigns employees to operate such a vehicle;

E. "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination vehicle. In the absence of a value

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specified by the manufacturer, gross combination weight rating shall be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit or units and any load thereon;

F. "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle;

G. "out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican or local jurisdiction that a driver, a commercial motor vehicle or a motor carrier operation is temporarily prohibited from operating;

H. "railroad-highway grade crossing violation" means a violation of a provision of Section 66-7-341 or 66-7-343 NMSA 1978 or a violation of federal or local law or rule pertaining to stopping at or crossing a railroad-highway grade crossing; and

I. "serious traffic violation" means conviction of any of the following if committed when operating a commercial motor vehicle:

(1) speed of fifteen miles or more per hour above the posted limits;

(2) reckless driving as defined by Section 66-8-113 NMSA 1978 or a municipal ordinance or the law of another state;

(3) homicide by vehicle, as defined in Section 66-8-101 NMSA 1978;

(4) injury to pregnant woman by vehicle as defined in Section 66-8-101.1 NMSA 1978 or a municipal ordinance or the law of another state; or

(5) any other violation of law relating to motor vehicle traffic control, other than a parking violation, that the secretary determines by regulation to

be a serious traffic violation. "Serious traffic violation" does not include a vehicle weight or vehicle defect violation."

Section 3. Section 66-5-58 NMSA 1978 (being Laws 1989, Chapter 14, Section 7, as amended) is amended to read:

"66-5-58. EMPLOYER RESPONSIBILITY.--An employer shall not knowingly allow, require, permit or authorize a driver to drive a commercial motor vehicle during a period in which:

A. the driver has a driver's license suspended, revoked or canceled by a state, has lost the privilege to drive a commercial motor vehicle in a state or has been disqualified from driving a commercial motor vehicle;

B. the driver has more than one driver's license as of the effective date of the provisions of the New Mexico Commercial Driver's License Act;

C. the driver, the commercial motor vehicle the driver is driving or the motor carrier operation of the employer is subject to an out-of-service order; or

D. the driver has been convicted of a railroad-highway grade crossing violation."

Section 4. Section 66-5-59 NMSA 1978 (being Laws 1989, Chapter 14, Section 8) is amended to read:

"66-5-59. COMMERCIAL DRIVER'S LICENSE REQUIRED.--

A. A person may not drive a commercial motor vehicle unless the person holds and is in immediate possession of a commercial driver's license and applicable endorsements valid for the vehicle the person is driving, except when driving under a commercial driver's instruction permit and accompanied by the holder of a commercial driver's license valid for the vehicle being driven.

B. A person may not drive a commercial motor vehicle while the person's driving privilege is suspended, revoked or canceled or while subject to a disqualification or in violation of an out-of-service order.

C. A person who is a resident of this state for at least thirty days may not drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

D. A person may not drive a commercial motor vehicle in violation of an out-of service order."

Section 5. Section 66-5-68 NMSA 1978 (being Laws 1989, Chapter 14, Section 17, as amended) is amended to read:

"66-5-68. DISQUALIFICATION.--

A. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than one year if the person:

(1) refuses to submit to a chemical test when requested pursuant to the provisions of the Implied Consent Act; or

(2) is convicted of a violation of:

(a) driving a commercial motor vehicle under the influence of intoxicating liquor or drugs in violation of Section 66-5-68.1 NMSA 1978, Section 66-8-102 NMSA 1978, an ordinance of a municipality of this state or the law of another state;

(b) leaving the scene of an accident involving a commercial motor vehicle driven by the person in violation of Section 66-7-201 NMSA 1978 or an ordinance of a municipality of this state or the law of another state; or

(c) using a commercial motor vehicle in the commission

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of any felony.

B. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than three years if any of the violations specified in Subsection A of this section occur while transporting a hazardous material required to be placarded.

C. The department shall disqualify a person from driving a commercial motor vehicle for life if convicted of two or more violations of any of the offenses specified in Subsection A of this section, or any combination of those offenses, arising from two or more separate incidents, but the secretary may issue regulations establishing guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to a period of not less than ten years. This subsection applies only to those offenses committed after July 1, 1989.

D. The department shall disqualify a person from driving a commercial motor vehicle for life if the person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or the possession with intent to manufacture, distribute or dispense a controlled substance.

E. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations or one hundred twenty days if convicted of three serious traffic violations, if the violations were committed while driving a commercial motor vehicle, arising from separate incidents occurring within a three-year period.

F. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than one hundred eighty days nor more than two

years if the person is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded pursuant to the federal Hazardous Materials Transportation Act or while operating a motor vehicle designed to transport more than fifteen passengers, including the driver. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than three years nor more than five years if, during any ten-year period, the person is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded pursuant to that act or while operating a motor vehicle designed to transport more than fifteen passengers, including the driver.

G. When a person is disqualified from driving a commercial motor vehicle, any commercial driver's license held by that person is invalidated without a separate proceeding and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed.

H. The department shall disqualify a person from driving a commercial motor vehicle:

(1) for a period of not less than sixty days if the person is convicted of a first violation of a railroad-highway grade crossing violation;

(2) for not less than one hundred twenty days if, during any three-year period, the person is convicted of a second railroad-highway grade crossing violation in a separate incident; and

(3) for not less than one year if, during any three-year period, the person is convicted of a third or subsequent railroad-highway grade crossing violation in a separate incident.

I. After disqualifying, suspending, revoking or canceling a commercial driver's license, the department shall, within ten days, update its records to reflect that action. After disqualifying, suspending, revoking or canceling a nonresident commercial driver's privileges, the department shall, within ten days, notify the licensing authority of the state that issued the commercial driver's license.

J. For purposes of this section, the term "convicted" includes a license revocation pursuant to the Implied Consent Act or an implied consent act of another state."

Section 6. Section 66-5-71 NMSA 1978 (being Laws 1998, Chapter 17, Section 5, as amended) is amended to read:

"66-5-71. PENALTIES FOR VIOLATION OF OUT -OF-SERVICE ORDERS.--

A. A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than one thousand one hundred dollars (\$1,100) or more than two thousand seven hundred fifty dollars (\$2,750), in addition to disqualification as provided in Subsection C of this section.

B. An employer who is convicted of a violation of Subsection C of Section 66-5-58 NMSA 1978 shall be subject to a civil penalty of not less than two thousand seven hundred fifty dollars (\$2,750) or more than eleven thousand dollars (\$11,000).

C. A driver who is convicted of violating an out-of-service order shall be disqualified for:

(1) not less than ninety days or more than one year if the driver is convicted of a first violation of an out-of-service order;

(2) not less than one year or more than five years if, during

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any ten-year period, the driver is convicted of two violations of out-of-service orders in separate incidents; and

(3) not less than three years or more than five years if, during any ten-year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents."

Section 7. A new section of the New Mexico Commercial Driver's License Act, Section 66-5-72 NMSA 1978, is enacted to read:

"66-5-72. EMPLOYER PENALTIES FOR RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS.--An employer who is convicted of a violation of Subsection D of Section 66-5-58 NMSA 1978 shall be subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation."

Section 8. Section 66-7-341 NMSA 1978 (being Laws 1978, Chapter 35, Section 445) is repealed and a new Section 66-7-341 NMSA 1978 is enacted to read:

"66-7-341. RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS--ALL DRIVERS.--

A. A person driving a vehicle approaching a railroad-highway grade crossing shall:

(1) obey traffic control devices, crossing gates or barriers or the directions of an enforcement official at the crossing;

(2) stop not more than fifty feet and not less than fifteen feet from the nearest rail of a crossing if:

(a) a train is moving through or blocking the crossing;
(b) a train is plainly visible and approaching the crossing within hazardous proximity to the crossing;

(c) the sound of a train's warning signal can be heard;

or

(d) a traffic control device, crossing gate, barrier or light

or an enforcement official signals the driver to stop; and

(3) proceed through the railroad-highway grade crossing only if it is safe to completely pass through the entire railroad-highway grade crossing without stopping.

B. A person shall not:

(1) drive a vehicle through, around or under a crossing gate or barrier at a railroad-highway grade crossing while the gate or barrier is closed or being opened or closed;

(2) drive onto the railroad-highway grade crossing and stop; or

(3) enter a crossing if the vehicle being driven has insufficient undercarriage clearance to pass over the crossing.

C. The penalty assessment for violation of this section is included in Section 66-8-116 NMSA 1978."

Section 9. Section 66-7-343 NMSA 1978 (being Laws 1978, Chapter 35, Section 447) is repealed and a new Section 66-7-343 NMSA 1978 is enacted to read:

"66-7-343. RAILROAD-HIGHWAY GRADE CROSSING VIOLATIONS--CERTAIN VEHICLES REQUIRED TO ALWAYS STOP--EXCEPTIONS.--

A. Except as set forth in Subsection D of this section, a driver of a vehicle carrying passengers for hire, a school bus carrying school children or a vehicle carrying hazardous materials, radioactive or explosive substances or flammable liquids as cargo or as part of its cargo, before entering a railroad-highway grade crossing, is

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required to stop no more than fifty feet and no less than fifteen feet from the nearest rail of the railroad.

B. While stopped, the driver shall:

- (1) look and listen in both directions along the track for an approaching train and for signals indicating that a train is approaching;
- (2) determine it is safe to proceed completely through the railroad-highway grade crossing before entering it; and
- (3) set the vehicle in a gear sufficiently low that gears will not need to be shifted before exiting the railroad-highway grade crossing.

C. A driver shall not shift gears while in a railroad-highway grade crossing.

D. A driver of a vehicle carrying passengers for hire, a school bus carrying school children or a vehicle carrying hazardous materials, radioactive or explosive substances or flammable liquids as cargo or as part of its cargo is not required to stop at:

- (1) a railroad-highway grade crossing where a police officer directs traffic to proceed;
- (2) a railroad-highway grade crossing where a stop-and-go traffic light controls movement of traffic;
- (3) a railroad-highway grade crossing used exclusively for industrial switching purposes, within a business district as defined in Section 66-1-4.2 NMSA 1978;
- (4) a railroad-highway grade crossing where use of the railroad has been abandoned and there is a sign indicating that the railroad has been

abandoned; or

(5) an industrial or spur line railroad-highway grade crossing marked with a sign reading "exempt crossing" that has been designated as exempt by appropriate state or local authorities.

E. Penalties for violation of this section are included in Section 66-8-116 NMSA 1978."

Section 10. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive a vehicle within this state.

C. It is unlawful for:

(1) a person twenty-one years of age or more who has an alcohol concentration in his blood or breath of eight one hundredths or more to drive a vehicle within this state; and

(2) a person who has an alcohol concentration in his blood or breath of four one hundredths or more to drive a commercial motor vehicle.

D. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:

(1) has an alcohol concentration of sixteen one hundredths or more in his blood or breath while driving a vehicle within this state;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Implied Consent Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.

E. A person under first conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars (\$500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction pursuant to this section, an offender may be sentenced to not less than forty-eight hours of community service or a fine of three hundred dollars (\$300). The offender shall be ordered by the court to participate in and complete a screening program described in Subsection H of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the bureau and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time

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specified by the court, any community service, screening program, treatment program or DWI school ordered by the court, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed pursuant to this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction pursuant to this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction pursuant to this section shall be punished, notwithstanding the provisions of Section 31-18-13 NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than one thousand dollars (\$1,000), or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond one year but shall not exceed five years. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

(1) upon a second conviction, an offender shall be sentenced to a jail term of not less than seventy-two consecutive hours, forty-eight hours of community service and a fine of five hundred dollars (\$500). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time

specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

(2) upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days and a fine of seven hundred fifty dollars (\$750). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to complete, within a time specified by the court, any screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

G. Upon a fourth or subsequent conviction pursuant to this section, an offender is guilty of a fourth degree felony, as provided in Section 31-18-15 NMSA 1978, and shall be sentenced to a jail term of not less than six months, which shall not be suspended or deferred or taken under advisement.

H. Upon any conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program and, if necessary, a treatment program approved by the court. The requirement imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

I. Upon a first conviction for aggravated driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection D of

this section,

as a condition of probation, an offender shall be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

J. Upon a first conviction for driving while under the influence of intoxicating liquor or drugs pursuant to the provisions of Subsection A, B or C of this section, as a condition of probation, an offender may be required to have an ignition interlock device installed and operating for a period of one year on all motor vehicles driven by the offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If an offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the offender may be in violation of the terms and conditions of his probation.

K. Upon any subsequent conviction pursuant to this section, as a condition of probation, a subsequent offender shall be required to have an ignition interlock device installed and operating for a period of at least one year on all motor vehicles driven by the subsequent offender, pursuant to rules adopted by the bureau. Unless determined by the sentencing court to be indigent, the subsequent offender

shall pay all costs associated with having an ignition interlock device installed on the appropriate motor vehicles. If a subsequent offender drives a motor vehicle that does not have an ignition interlock device installed on the motor vehicle, the subsequent offender may be in violation of the terms and conditions of his probation.

L. In the case of a first, second or third offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

M. A conviction pursuant to a municipal or county ordinance in New Mexico or a law of any other jurisdiction, territory or possession of the United States that is equivalent to New Mexico law for driving while under the influence of intoxicating liquor or drugs, and that prescribes penalties for driving while under the influence of intoxicating liquor or drugs, shall be deemed to be a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction.

N. In addition to any other fine or fee that may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.

O. As used in this section:

(1) "bodily injury" means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body; and

(2) "conviction" means an adjudication of guilt and does not include imposition of a sentence."

Section 11. Section 66-8-102.1 NMSA 1978 (being Laws 1982, Chapter 102, Section 2, as amended) is amended to read:

"66-8-102.1. GUILTY PLEAS--LIMITATIONS.--Where the complaint or information alleges a violation of Section 66-8-102 NMSA 1978, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to the violation of one of the subsections of Section 66-8-102 NMSA 1978, and no other disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed pursuant to the Implied Consent Act disclose that the blood or breath of the person charged contains an alcohol concentration of:

A. eight one hundredths or more; or

B. four one hundredths or more if the person charged is driving a commercial motor vehicle."

Section 12. Section 66-8-110 NMSA 1978 (being Laws 1978, Chapter 35, Section 518, as amended) is amended to read:

"66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

A. The results of a test performed pursuant to the Implied Consent Act may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested for driving a motor vehicle while under the influence of intoxicating liquor or drugs.

B. When the blood or breath of the person tested contains:

(1) an alcohol concentration of less than four one hundredths, it shall be presumed that the person was not under the influence of intoxicating liquor;

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(2) an alcohol concentration of at least four one hundredths but less than eight one hundredths:

(a) no presumption shall be made that the person either was or was not under the influence of intoxicating liquor, unless the person is driving a commercial motor vehicle; and

(b) the amount of alcohol in the person's blood may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor; or

(3) an alcohol concentration of four one hundredths or more and the person is driving a commercial vehicle, it shall be presumed that the person is under the influence of intoxicating liquor.

C. The arresting officer shall charge the person tested with a violation of Section 66-8-102 NMSA 1978 when the blood or breath of the person contains an alcohol concentration of:

(1) eight one hundredths or more; or

(2) four one hundredths or more if the person is driving a commercial motor vehicle.

D. When a person is less than twenty-one years of age and the blood or breath of the person contains an alcohol concentration of two one hundredths or more, the person's driving privileges shall be revoked pursuant to the provisions of the Implied Consent Act.

E. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

F. The presumptions in Subsection B of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.

G. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor, the trial judge shall be required to inquire into the past driving record of the person before sentence is entered in the matter."

Section 13. Section 66-8-111 NMSA 1978 (being Laws 1978, Chapter 35, Section 519, as amended) is amended to read:

"66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

A. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in Section 66-8-107 NMSA 1978, none shall be administered except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in Section 66-8-107 NMSA 1978 upon his finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of alcohol or a controlled substance, thereby causing the death or great bodily injury of another person, or there is probable cause to believe that the person has committed a felony while under the influence of alcohol or a controlled substance and that chemical tests as provided in Section 66-8-107 NMSA 1978 will produce material evidence in a felony prosecution.

B. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to

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believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor or drugs and that, upon his request, the person refused to submit to a chemical test after being advised that failure to submit could result in revocation of his privilege to drive, shall revoke the person's New Mexico driver's license or any nonresident operating privilege for a period of one year or until all conditions for license reinstatement are met, whichever is later.

C. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor and that the person submitted to chemical testing pursuant to Section 66-8-107 NMSA 1978 and the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age, shall revoke the person's license or permit to drive or his nonresident operating privilege for a period of:

(1) ninety days or until all conditions for license reinstatement are met, whichever is later, if the person is twenty-one years of age or older;

(2) six months or until all conditions for license reinstatement are met, whichever is later, if the person is less than twenty-one years of age and has not previously had his license revoked pursuant to the provisions of this section, notwithstanding any provision of the Children's Code; or

(3) one year or until all conditions for license reinstatement are met, whichever is later, if the person has previously had his license revoked pursuant

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to the provisions of this section, notwithstanding the provisions of Paragraph (1) or (2) of this subsection or any provision of the Children's Code.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

E. If the person subject to the revocation provisions of this section is a resident or will become a resident within one year and is without a license to operate a motor vehicle in this state, the department shall deny the issuance of a license to him for the appropriate period of time as provided in Subsections B and C of this section.

F. A statement signed by a law enforcement officer, pursuant to the provisions of Subsection B or C of this section, shall be sworn to by the officer or shall contain a declaration substantially to the effect: "I hereby declare under penalty of perjury that the information given in this statement is true and correct to the best of my knowledge.". A law enforcement officer who signs a statement, knowing that the statement is untrue in any material issue or matter, is guilty of perjury as provided in Section 66-5-38 NMSA 1978."

Section 14. Section 66-8-111.1 NMSA 1978 (being Laws 1984, Chapter 72, Section 7, as amended) is amended to read:

"66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR DEPARTMENT -- WRITTEN NOTICE OF REVOCATION AND RIGHT TO HEARING.--On behalf of the department, a law enforcement officer requesting a chemical test or directing the administration of a chemical test pursuant to Section 66-8-107 NMSA 1978 shall serve immediate written notice of revocation and of right to a hearing on a person who refuses to permit chemical testing or on a person who submits to a chemical test the

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results of which indicate an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age. Upon serving notice of revocation, the law enforcement officer shall take the license or permit of the driver, if any, and issue a temporary license valid for twenty days or, if the driver requests a hearing pursuant to Section 66-8-112 NMSA 1978, valid until the date the department issues the order following that hearing; provided that a temporary license shall not be issued to a driver without a valid license or permit. The law enforcement officer shall send the person's driver's license to the department along with the signed statement required pursuant to Section 66-8-111 NMSA 1978."

Section 15. Section 66-8-112 NMSA 1978 (being Laws 1978, Chapter 35, Section 520, as amended) is amended to read:

"66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--REVIEW.--

A. The effective date of revocation pursuant to Section 66-8-111 NMSA 1978 is twenty days after notice of revocation or, if the person whose driver's license or privilege to drive is being revoked or denied requests a hearing pursuant to this section, the date that the department issues the order following that hearing. The date of notice of revocation is:

(1) the date the law enforcement officer serves written notice of revocation and of right to a hearing pursuant to Section 66-8-111.1 NMSA 1978; or

(2) in the event the results of a chemical test cannot be obtained immediately, the date notice of revocation is served by mail by the

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department. This notice of revocation and of right to a hearing shall be sent by certified mail and shall be deemed to have been served on the date borne by the return receipt showing delivery, refusal of the addressee to accept delivery or attempted delivery of the notice at the address obtained by the arresting law enforcement officer or on file with the department.

B. Within ten days after receipt of notice of revocation pursuant to Subsection A of this section, a person whose license or privilege to drive is revoked or denied or the person's agent may request a hearing. The hearing request shall be made in writing and shall be accompanied by a payment of twenty-five dollars (\$25.00) or a sworn statement of indigency on a form provided by the department. A standard for indigency shall be established pursuant to regulations adopted by the department. Failure to request a hearing within ten days shall result in forfeiture of the person's right to a hearing. Any person less than eighteen years of age who fails to request a hearing within ten days shall have notice of revocation sent to his parent, guardian or custodian by the department. A date for the hearing shall be set by the department, if practical, within thirty days after receipt of notice of revocation. The hearing shall be held in the county in which the offense for which the person was arrested took place.

C. The department may postpone or continue any hearing on its own motion or upon application from the person and for good cause shown for a period not to exceed ninety days from the date of notice of revocation and provided that the department extends the validity of the temporary license for the period of the postponement or continuation.

D. At the hearing, the department or its agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of

relevant books and papers.

E. The hearing shall be limited to the issues:

(1) whether the law enforcement officer had reasonable grounds to believe that the person had been driving a motor vehicle within this state while under the influence of intoxicating liquor or drugs;

(2) whether the person was arrested;

(3) whether this hearing is held no later than ninety days after notice of revocation; and either

(4) whether:

(a) the person refused to submit to a test upon request of the law enforcement officer; and

(b) the law enforcement officer advised that the failure to submit to a test could result in revocation of the person's privilege to drive; or

(5) whether:

(a) the chemical test was administered pursuant to the provisions of the Implied Consent Act; and

(b) the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more in the person's blood or breath if the person is less than twenty-one years of age.

F. The department shall enter an order sustaining the revocation or denial of the person's license or privilege to drive if the department finds that:

(1) the law enforcement officer had reasonable grounds to

believe the driver was driving a motor vehicle while under the influence of intoxicating liquor or drugs;

(2) the person was arrested;

(3) this hearing is held no later than ninety days after notice of revocation; and

(4) either:

(a) the person refused to submit to the test upon request of the law enforcement officer after the law enforcement officer advised him that his failure to submit to the test could result in the revocation of his privilege to drive; or

(b) that a chemical test was administered pursuant to the provisions of the Implied Consent Act and the test results indicated an alcohol concentration in the person's blood or breath of eight one hundredths or more if the person is twenty-one years of age or older, four one hundredths or more if the person is driving a commercial motor vehicle or two one hundredths or more if the person is less than twenty-one years of age.

G. If one or more of the elements set forth in Paragraphs (1) through (4) of Subsection F of this section are not found by the department, the person's license shall not be revoked.

H. A person adversely affected by an order of the department may seek review within thirty days in the district court in the county in which the offense for which the person was arrested took place. The district court, upon thirty days' written notice to the department, shall hear the case. On review, it is for the court to determine only whether reasonable grounds exist for revocation or denial of the

person's license or privilege to drive based on the record of the administrative proceeding.

I. Any person less than eighteen years of age shall have results of his hearing forwarded by the department to his parent, guardian or custodian."

Section 16. Section 66-8-116 NMSA 1978 (being Laws 1978, Chapter 35, Section 524, as amended) is amended to read:

"66-8-116. PENALTY ASSESSMENT MISDEMEANORS--DEFINITION--
SCHEDULE OF ASSESSMENTS.--

A. As used in the Motor Vehicle Code, "penalty assessment misdemeanor" means violation of any of the following listed sections of the NMSA 1978 for which, except as provided in Subsection D of this section, the listed penalty assessment is established:

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
Permitting unlicensed		
minor to drive	66-5-40	\$ 10.00
Failure to obey sign	66-7-104	10.00
Failure to obey signal	66-7-105	10.00
Speeding	66-7-301	
(1) up to and including		
ten miles an hour		
over the speed limit		15.00
(2) from eleven up to		
and including fifteen		

miles an hour			
over the speed limit		30.00	
(3) from sixteen up to			
and including twenty			
miles an hour over the			
speed limit		65.00	
(4) from twenty-one up to			
and including twenty-five			
miles an hour			
over the speed limit		100.00	
(5) from twenty-six up to			
and including thirty			
miles an hour over the			
speed limit		125.00	
(6) from thirty-one up to			
and including thirty-five			
miles an hour over the			
speed limit		150.00	
(7) more than thirty-five			
miles an hour over the			
speed limit		200.00	
Unfastened safety belt	66-7-372	25.00	
Child not in restraint device			
or seat belt	66-7-369	25.00	

Minimum speed	66-7-305	10.00
Speeding	66-7-306	15.00
Improper starting	66-7-324	10.00
Improper backing	66-7-354	10.00
Improper lane	66-7-308	10.00
Improper lane	66-7-313	10.00
Improper lane	66-7-316	10.00
Improper lane	66-7-317	10.00
Improper lane	66-7-319	10.00
Improper passing	66-7-309 through 66-7-312	10.00
Improper passing	66-7-315	10.00
Controlled access		
violation	66-7-320	10.00
Controlled access		
violation	66-7-321	10.00
Improper turning	66-7-322	10.00
Improper turning	66-7-323	10.00
Improper turning	66-7-325	10.00
Following too closely	66-7-318	10.00
Failure to yield	66-7-328 through 66-7-332	10.00
Failure to yield	66-7-332.1	25.00
Pedestrian violation	66-7-333	10.00
Pedestrian violation	66-7-340	10.00
Failure to stop	66-7-342 and 66-7-344	

	through 66-7-346	10.00
Railroad-highway grade		
crossing violation	66-7-341 and 66-7-343	10.00
Passing school bus	66-7-347	100.00
Failure to signal	66-7-325 through 66-7-327	10.00
Failure to secure load	66-7-407	100.00
Operation without oversize-		
overweight permit	66-7-413	50.00
Improper equipment	66-3-801	10.00
Improper equipment	66-3-901	20.00
Improper emergency		
signal	66-3-853 through 66-3-857	10.00
Operation interference	66-7-357	5.00
Littering	66-7-364	300.00
Improper parking	66-7-349 through 66-7-352	
	and 66-7-353	5.00
Improper parking	66-7-352.5	50.00
Improper parking	66-3-852	5.00
Failure to dim lights	66-3-831	10.00
Riding in or towing		
occupied house trailer	66-7-366	5.00
Improper opening of doors	66-7-367	5.00
No slow-moving vehicle		
emblem or flashing		

amber light 66-3-887 5.00

Open container - first

violation 66-8-138 25.00.

B. The term "penalty assessment misdemeanor" does not include a violation that has caused or contributed to the cause of an accident resulting in injury or death to a person.

C. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, a fine imposed upon later conviction shall not exceed the penalty assessment established for the particular penalty assessment misdemeanor and probation imposed upon a suspended or deferred sentence shall not exceed ninety days.

D. The penalty assessment for speeding in violation of Paragraph (4) of Subsection A of Section 66-7-301 NMSA 1978 is twice the penalty assessment established in Subsection A of this section for the equivalent miles per hour over the speed limit."

Section 17. EMERGENCY.--It is necessary for the public peace, health and safety that the act take effect immediately.